



**LA SALLE UNIVERSITY
RESPONSE TO U.S. DEPARTMENT OF
EDUCATION
DRAFT PROGRAM REVIEW REPORT**

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I. INTRODUCTION

On January 25, 2006, the Department of Education (“Department”) presented La Salle University (“La Salle” or “the University”) its Preliminary Report (“Report”) of the Program Review (“Review”) conducted from May 17 to August 26, 2005, that focused on La Salle’s compliance with the Clery Act. For the reasons explained in more detail below, La Salle disputes the Findings of the Department’s Report. In some instances, the factual basis underlying the Department’s Finding is unfounded. In other instances, the Department has failed to provide La Salle with the information requested to form a full and meaningful response to the Finding. Moreover, throughout the Report, the Department fails to consider many of La Salle’s voluntary corrective actions implemented since June 2004, when two alleged sexual assaults, which sparked the Department’s investigation and Review, were brought to the attention of La Salle’s management. These voluntary corrective actions obviate the necessity of any further action by the Department of Education.

La Salle welcomes the opportunity for continued dialogue with the Department on these issues with a goal towards amicably resolving any disputes. It is in that spirit that La Salle provides the following detailed response to the Department’s Report.

II. FINDING #1: FAILURE TO REPORT AND MISCODING OF SPECIFIC INCIDENTS

A. The Department’s Position

Despite alleging that La Salle failed to report as Clery Act crimes, or miscoded, “specific incidents” for 2001-03, the Department does not identify the figures that it believes are correct for these years, or identify *any* particular incident that was improperly omitted or miscoded. Specifically, the Department states “the University failed to report all required incidents in its Campus Security Reports for the years under review, 2001, 2002 and 2003. . . . The record

keeping systems used by the Offices of Security and Community Development/Student Affairs makes it difficult to determine which incidents were used to arrive at the statistics in certain Clery categories and which incidents were omitted. This information is necessary to properly identify unreported and under-reported incidents.” Report, at 3-4.

By letter dated February 14, 2006, La Salle’s counsel requested more specific information it presumed the Department must have had to support the serious allegation that the University omitted or miscoded Clery Act crimes. *See* Exhibit 1 (letter from Scott A. Coffina to John S. Loreng). In a letter to the University President dated March 2, 2006, the Department again did not identify any particular incidents that were omitted or miscoded, but rather stated that “in making this finding, the Department relied on information in the University’s own internal audit on campus security, which was provided to Department staff by the University during the on-site review. Therefore, the University should already have the information requested to adequately respond to the finding, or to take corrective action to strengthen the adequacy of its record keeping system.” Exhibit 2 (Letter from Nancy Klingler to Brother Michael J. McGinniss).

B. La Salle’s Response

The factual underpinning of this Finding remains unclear. Specifically, the Department may be contending that La Salle’s revised crime statistics for 2001 and 2002 – following an extensive self-initiated audit that changed the numbers of reported crimes in certain categories – necessarily demonstrates that the original crime statistics submitted for 2001 and 2002 were inaccurate. On the other hand, the Department may be contending that the amended crime statistics still under-report and miscode certain crimes. La Salle will respond to both possible bases for this Finding.

With respect to the first theory, the University concedes that its original crime statistics for 2001 and 2002 omitted and/or miscoded a number of incidents, as reflected in the revised statistics resulting from its internal audit. In some cases, this miscoding resulted in over – reporting certain off-campus incidents. La Salle’s crime statistics for 2003, first published in the 2004 Security Report, also were reviewed and validated through the internal audit. La Salle stands by the accuracy of the figures reflected in its October 2004 Security Report in the categories identified in the Report.

La Salle extended its investigation of the alleged 2003 and 2004 sexual assaults to an audit of its Incident Reports and crime statistics covering the review period of 2001-03, notwithstanding that its crime statistics were not implicated by the alleged sexual assaults or the subsequent Security on Campus complaint that spurred the Department’s investigation. The audit was designed and directed by a consultant with Clery Act expertise retained by the University, and the records physically reviewed by attorneys in La Salle’s outside law firm. At the outset of the audit, La Salle’s outside Clery Act consultant, Brett A. Sokolow, trained the reviewing attorneys on the UCR definitions as applied by the Department.¹ After the reviewing attorneys identified and “tagged” Incident Reports for inclusion in La Salle’s crime statements, the audit worksheets and the Incident Reports themselves were reviewed by Mr. Sokolow, who validated and finalized the crime statistics La Salle eventually reported in October 2004.

The Department should not ground a Finding that La Salle violated the Clery Act on the basis that its original figures for 2001-02 were inadequate. Specifically, La Salle voluntarily conducted its own internal audit of its crime statistics for 2001 and 2002 before Department

¹ Sokolow, who had worked with La Salle in the past, has assisted institutions in more than 30 Clery Act compliance audits.

inquiry. Self-motivated compliance action and voluntary self-correction should be applauded, not criticized. Accordingly, no financial penalty or corrective action is appropriate if the basis for this Finding is that La Salle amended its original crime statistics voluntarily and increased the number of reported incidents in certain crime categories.

If the Department's finding is based on the contention that the amended crime statistics for 2001 and 2002 continue to under-report or miscode crimes, or that the 2003 statistics are inaccurate, La Salle vigorously disagrees. Indeed, the Department has not identified any incident in the amended statistics for 2001 and 2002, or the original statistics for 2003, that was omitted or miscoded, despite La Salle's request that the Department do so. Moreover, any complaint by the Department that it could not determine what crimes were reported in the original or revised statistics would be unfounded. Specifically, the Department was directed to each incident included in the original and revised statistics during its review.

C. Response to Alleged Weaknesses Identified by the Department

1. La Salle's Record Keeping System Provides A Reliable Basis For Reporting Accurate Crime Statistics.

The Department contends that La Salle's record-keeping system is inadequate in several respects. La Salle respectfully disagrees.

La Salle's Department of Security and Safety has had a record keeping system that makes it easy to compile its annual statistics, and to retrieve any Incident Report. As Incident Reports are turned in at the conclusion of a shift, the supervisor assigns each a control number reflecting the year, month, and consecutive incident number for that month. For example, the control number in the upper right corner of the Incident Report at Exhibit 3 (Year 01, Month 02, Case No. 130), indicates that this burglary was the 130th incident (only a few of which are crimes) to which Security responded in February 2001. The shift supervisor records the control numbers in

a call book, before leaving them in an in-box for further review.² Incident Reports are maintained and stored by year and month, and further, by case number in consecutive order.

Each Incident Report is reviewed and organized each weekday morning by the Department's Program Manager, who identifies significant incidents, including serious crimes, and prepares a "24-hour report" e-mail to University management and department heads.³ Next, during the same weekday morning, the Program Manager gives the Incident Reports to the Investigator – a 30 year Philadelphia police veteran with direct experience coding crimes – who codes crimes according to their UCR definitions (occasionally conferring with his colleagues on borderline or complex cases) and records them in a spreadsheet he maintains throughout the year. *See* Exhibit 4 ("Crime On Campus 2001-03," "Crime Off Campus 2001-03"). On those rare occasions when the Security Department receives an Incident Report from Student Affairs of a crime to which Security had not also initially responded, the Investigator will record that crime in his "rolling" spreadsheet of reported crimes as well. The Investigator also records in the crime log maintained at the front desk of security headquarters any crimes reflected in the Incident Reports he reviews.

From this system, counting and reporting crime statistics is a relatively easy task. La Salle's crime statistics can be traced back to the spreadsheet maintained and supplemented by the Investigator as Incident Reports are received, and the Incident Reports themselves are readily available for review. La Salle's internal investigation revealed that the University historically over-reported crimes occurring outside of the geographic boundaries prescribed by the Clery

² A shift supervisor will often present Incident Reports of serious incidents to the Department's Program Manager in-person, or likely would have discussed them with the supervisory staff of Security, including the Director, in the overnight hours.

³ The 24-hour report later is reviewed and actually sent by the Director of Security and Safety.

Act, with crimes reported as occurring within the off-campus neighborhood in which many students reside and travel.⁴ Such crimes were reported as “public property” crimes by the University, in recognition of the obvious interest students and families have in the safety of La Salle’s neighborhood, although many of them were beyond the Clery Act’s definition of public property.

La Salle believes that the documentation provided to the Program Review Team (“PRT”) – the vast majority of which were Incident Reports for Security and Student Affairs - was more than adequate to enable the Department to identify all of the crimes comprising La Salle’s original and revised crime statistics.⁵ As the Report acknowledges, the PRT was given the instructions and the work papers from the audit yielding the figures La Salle reported in October 2004, and had access to all of the Incident Reports from both Security and Student Affairs. The audit work papers had columns for each crime that was to be included in La Salle’s statistics (subject to the later validation by Brett Sokolow), with an identifying legend (and date) that corresponded with a Post-It note attached to the particular Incident Report reflecting the crime. *See Exhibit 5 (Audit work papers).* These Post-It notes were still affixed to the respective Incident Reports at the time of the program review – counsel explained to the PRT the relevance of the Post-It note to the October 2004 crime statistics at the outset of the Review – and they remain there to this day. Examples of Incident Reports with the Post-It notes attached for every crime category identified on page 3 of the Report are attached as Exhibit 6.

⁴ La Salle does not have fraternity houses or own or control off-campus housing in which students live. La Salle formerly leased two towers within the Ogontz Manor complex, which was considered another on-campus residence hall. La Salle vacated Ogontz Manor in the summer of 2005, with the opening of a new residence hall on campus.

⁵ As it surely would attest, the PRT also had unfettered access to all of the key players in La Salle’s crime reporting and campus judicial process, as well as outside counsel, not only for formal interviews, but for more informal questions about the University’s crime reporting, record keeping, or the audit itself.

2. La Salle Previously Uncovered and Addressed the Weaknesses Identified by the Department.

The Department cites a number of alleged weaknesses in La Salle's crime reporting structure that it asserts contributed to inaccurate crime figures. *See Report*, at 4. La Salle independently uncovered these same weaknesses in the course of its own internal investigation, and believes that it already has addressed the Department's concerns in this regard.

a. Enhanced Training and Dedicated Training Budget

One significant improvement already undertaken by La Salle involves enhanced training within both Security and Student Affairs. In September 2004, La Salle's outside consultant, Brett Sokolow, led a series of training sessions for all of the University's designated campus security authorities – and others – on Clery Act compliance and crime reporting.⁶ This training was followed by another training session, also led by Sokolow, in January 2005, that involved a more in-depth review of the UCR definitions and their applicability to campus crime reporting, including the Department's interpretation of the distinction between burglary and theft in residence halls. Supervisory staff from both Security and Student Affairs attended both of these training sessions.

La Salle also has established a designated budget for Clery Act training. Indeed, twelve different Clery Act training sessions were held by the University's counsel in the fall of 2005, including sessions for the entire Athletic Department staff, roll-call training for security officers on each shift, a specific session with the management of Security, and sessions with Student Affairs staff. There also were training sessions to which the entire campus community was

⁶ This training was attended by Security supervisors, Community Development professional staff, the entire Athletic Department (with a make-up session held for those who missed it), advisors to student organizations, and academic deans. In addition to the information on the Clery Act and what it covers, attendees were shown how to access the Student Affairs Incident Report form, instructed on how to prepare it, and also informed of the list of titles to whom students and employees are directed to report crimes, pursuant to 34 C.F.R. §668.46(b)(2)(iii).

invited. These training sessions, tailored for each individual audience, covered the basic requirements of the Clery Act with emphasis on crime reporting and identification of the resources available at the University to assist crime victims.

Although for many years all new Security Officers have been trained on how to prepare each line of Security's Incident Report (with specific mention of the previously-named Campus Security Act), *see* Exhibit 7 (Incident Report training document), La Salle's Director of Security and Safety has prepared a new training presentation that will further enhance Incident Report writing within Security. *See* Exhibit 8. This training presentation has been given to Security supervisors who, in turn, pass the instruction along to line security officers in the course of their routine supervision and review of Incident Reports. The Director of Security and Safety is also planning on formally presenting this training in its entirety to line officers.

b. Administrative Oversight

The Report also alleges that La Salle's crime reporting system suffered from a lack of administrative oversight. La Salle believes that it already has addressed this concern by formally designating its Director of Security and Safety as its Clery Act coordinator. Moreover, the Director and an Assistant Director are taking an active role in reviewing all of the Incident Reports identified by the Investigator for inclusion in La Salle's Security Report.⁷ The preparation of the crime statistics for the annual report now commences earlier in the year, and the process is better organized – the preliminary statistics are assembled with copies of each underlying Incident Report, and the Director, Assistant Director and Investigator meet and

⁷ La Salle has made two major enhancements to its security force in the last two years. It has added a second Associate Director position, currently manned by Denny Graeber who is an attorney and an experienced Philadelphia police veteran. Mr. Graeber's responsibilities include participating in the review of University crime and disciplinary statistics. La Salle also added to the breadth of its coverage on its security perimeter by contracting with Allied Barton Security Services for increased bicycle patrols in the neighborhood frequented by La Salle students.

review each one of them for proper classification. For the past two years, this entire package has been forwarded to counsel for its review as well.

The University decided to continue its practice of giving its Vice President for Financial Affairs and Treasurer ultimate responsibility for submitting La Salle's crime statistics to the Department so as to ensure an independent review outside of Security. As part of the process, the new Vice President meets with the Security Director to review the statistics before they are submitted.

c. Coordination of Clery Act Reporting

Finally, La Salle has taken steps to strengthen the coordination of information from sources outside of the Security Department. For example, to address Security's concern that it occasionally received multiple Incident Reports from Student Affairs with differing accounts about the same incidents, Student Affairs has instituted a control number system whereby all Incident Reports from the same incident can be readily identified as such for reporting purposes and for follow-up investigation. Moreover, although La Salle and its neighboring police districts enjoy a close working relationship and the University is confident that it routinely learns of incidents reported to the police involving La Salle students or staff, the Director of Security and Safety, as he finalizes the University's annual crime statistics, now sends a formal letter to the local police captains, asking if they have any information that might not previously have been conveyed to La Salle. Finally, in the interest of completeness, La Salle has instituted the practice of requesting pastoral and professional counselors – otherwise exempt from Clery Act reporting – to report voluntarily any crimes that perhaps had been reported only to them, even if anonymously, for inclusion in the University's annual crime statistics.

D. Conclusion

In conclusion, the Department has provided no basis for La Salle to evaluate and respond to its allegation that the University omitted or miscoded Clery Act crimes. La Salle is confident in the process and the results of the audit resulting in the 2001-03 crime figures included in its 2004 Security Report. La Salle believes it has made substantial improvements to its crime reporting system, but is open to any additional suggestions the Department might have after reviewing this response to further enhance its crime reporting process. No financial penalty or corrective action is appropriate based on this Finding.

III. FINDING #2: MISREPRESENTATION OF DISCIPLINARY REFERRAL STATISTICS

A. The Department's Position

The Report states that La Salle materially misrepresented the number of disciplinary referrals for liquor law and drug law violations, and describes several alleged weaknesses in recordkeeping and communication that the PRT contends contributed to the number of cases that allegedly were under-reported. According to the Report, the PRT examined “a sample of Incident Reports and judicial files that resulted in or should have resulted in a disciplinary response based on available information.” Report, at 5. Based upon this undefined sample, the PRT counted 101 liquor law disciplinary cases for 2001, 95 for 2002, and 91 for 2003; and 15 drug law disciplinary cases for 2001, 4 for 2002, and 16 for 2003.⁸

⁸ The Report did not identify any of these cases, however, to permit a meaningful evaluation and response by La Salle. On February 14, 2006, La Salle's counsel requested this information, which the Department provided around March 2, 2006. See Exhibits 1 and 2.

B. La Salle's Response

The Report substantially misstates La Salle's reported disciplinary referrals for 2001-2003. Following its internal audit in the summer of 2004, La Salle reported *revised* figures of disciplinary cases for liquor law violations of 29 for 2001 and 87 for 2002, and an *original* figure of 68 for 2003. These statistics were reported to the Department in October 2004, and provided again during the subsequent program review.⁹ Nevertheless, the Report incorrectly states that La Salle reported only *one* disciplinary referral for liquor law violations for 2002, and *zero* such referrals for 2003. This significant discrepancy between La Salle's actual reported statistics and those alleged in the Report, casts this Finding in an entirely different light.

In addition to incorrectly portraying La Salle's reported disciplinary statistics, this Finding, accompanied by several alleged weaknesses to be addressed, is meritless and results from a misconception of La Salle's disciplinary system. This is best demonstrated by a detailed recitation of the process by which La Salle enforces its alcohol policy and generates its statistics.

1. La Salle's Enforcement of Its Alcohol Policy

La Salle vigorously enforces its alcohol policy. During the 2003-2004 academic year, when La Salle had 2,056 resident students (and total enrollment of 3,314 full-time students), there were 494 cases in which students were found responsible for violating its alcohol policy, and there were 583 such cases in 2002-03, with 2,035 resident students. *See* Report, Appendix B. La Salle's alcohol and drug policy, published in the Student Guide to Resources, Rights and Responsibilities, *see* Exhibit 9, is enforced at a lower evidentiary threshold than in the criminal system.

⁹ They also are currently reported on the Department's crime statistics web site at <http://ope.ed.gov/security/search.asp>.

Violating La Salle's alcohol policy does not necessarily equate with violating Pennsylvania liquor laws. For example, it is a violation of campus policy, but not the law, for a minor merely to be present when alcohol is being consumed. And it is a violation of La Salle's alcohol policy, but not Pennsylvania liquor law, for a person of legal age to consume alcohol in the presence of minors.¹⁰ Both of these policy infractions are punished by the University similar to the crimes of underage drinking or possession, and furnishing alcohol to a minor. This policy is easier to enforce than the liquor law, making discipline more swift and certain, as reflected in the high number of alcohol policy violations.

La Salle expressly incorporated Pennsylvania liquor law into its alcohol policy, and trains its staff to enforce it. Thus, in a situation where an underage student is caught transporting or holding alcohol, or admits to drinking, the description of the "charge" in the resulting Disciplinary Report would reflect a policy violation that is also a liquor law violation, and would be counted in La Salle's Clery Act statistics. La Salle's statistics include many cases of clear liquor law violations that were not included among the Department's proffered statistics.

2. Source of La Salle's Disciplinary Statistics

The source of data to compile La Salle's disciplinary statistics for liquor law violations – or drug and weapons law violations – is the database of the University judicial system and the corresponding disciplinary files secured in the Associate Dean of Students' office suite. This database was provided and explained to the PRT so it could readily identify the disciplinary referrals for alcohol policy violations, a subset of which would reflect liquor law violations as well.

¹⁰ La Salle likewise enforces its drug policy at a lower threshold than the criminal law. Students are subject to the same disciplinary sanctions for drug paraphernalia as they are for possessing or consuming illegal drugs.

The Report indicates confusion on the part of the Department as to the source of information for La Salle's disciplinary statistics. Apparently, the Report conflates the varied sources of information for campus crime generally with the source of disciplinary statistics. For example, the Report alleges that "[A]ccording to La Salle's Lead Security Investigator, the only sources for statistics are Incident Reports from the Office of Security and Safety and the Community Development/Student Affairs Office. However, many other University offices and officials (such as employees in the Office of Resident Life) receive information that should be included in La Salle's Campus Security Report." Report, at 5.

First, it should be noted that La Salle does not have an "Office of Resident Life." The "residence life" function is handled by the Community Development unit within Student Affairs. Second, the statement attributed to the lead Investigator is accurate as it relates to campus crime generally but inaccurate as it relates to disciplinary cases. The primary sources for the campus crime statistics required by the Clery Act are Incident Reports generated by security officers and Community Development staff members.¹¹ Security generally is not directly involved in the disciplinary process, and its Incident Reports are rarely the source of disciplinary referrals for violations of University policy. Security, however, routinely faxes all Incident Reports involving a student (whatever the issue) to Student Affairs for review. Such Incident Reports might support a disciplinary charge for an alcohol policy violation if, for example, a security officer interdicts an underage student transporting alcohol. In such cases, a Disciplinary Report is generated and entered into the Disciplinary Report database. For purposes of compiling La

¹¹ The University also is routinely informed of crimes reported to the Philadelphia Police Department, through its relationships with the local police districts. When such reports are received from the police, the Department of Safety and Security prepares its own Incident Reports. Additionally, the Student Affairs Incident Report is widely available on its web page, and occasionally students are the source of a crime report, although typically not without some involvement by Community Development and/or Security, both of which would prepare their own Incident Reports as well.

Salle's disciplinary statistics for that year, the Disciplinary Report would be reviewed to see if the alleged facts demonstrate a liquor law violation, and if so, it would be counted. Accordingly, the Disciplinary Report database (and related files) is the only source necessary for counting La Salle's disciplinary referral statistics.

3. The Alleged "Weaknesses" Described in Finding #2 Are Not Applicable to La Salle's Disciplinary Referral Statistics.

With the preceding description of how La Salle's disciplinary statistics are generated, it becomes clear that the three alleged "weaknesses" set forth on page 5 of the Report are not applicable to La Salle's disciplinary referral statistics. If anything, these alleged "weaknesses" would appear to reflect upon La Salle's crime statistics and crime log.

The first identified "weakness" is that there "was no standardized protocol for advising Security of incidents occurring in resident halls. Resident life staff was left to determine if Security involvement was needed on an ad hoc basis." Regardless of whether or not an RA advises Security of an incident in a dorm room, it has no bearing on the University's decision to refer a student for disciplinary action, and, consequently, on La Salle's disciplinary statistics, because Security has no role in that decision. Moreover, Security ultimately reviews all Disciplinary Reports related to alcohol policy violations to compile La Salle's disciplinary statistics for liquor law violations, including those resulting from dorm room incidents, and therefore, those statistics are complete.¹²

¹² Although perhaps an interesting debating point for another forum, the Clery Act does not prescribe standards for the circumstances under which an institution's residence life staff (in La Salle's case, Community Development staff) must involve its security department. La Salle notes, however, that Community Development staff are instructed to contact Security to assist in authorized drug searches; when a student reports a crime; when a student's (or staff member's) health or safety is threatened; and in other cases where in their judgment such assistance is needed. *See, e.g.*, Exhibit 10 (Crisis 101 Handout).

The second “weakness” described in the Report is a “significant lag time between the generation of a Community Development – Student Affairs Incident Report and the delivery of that report to the Department of Security. A delay of 30 days or more was standard during the review period.” Once again, this criticism is misplaced as a contributing factor to the alleged misrepresentation of La Salle disciplinary referral statistics that is the subject of Finding #2. Because Clery Act disciplinary statistics are only reported in the annual Security Report, and have no bearing on an institution’s crime log or timely warnings, a lag time of 30 days before Security is notified of disciplinary referrals would have no impact on La Salle’s reported statistics.

To the extent that the Department intended to direct this criticism at the timeliness of Community Development reporting campus crime to Security, this concern is misplaced. In nearly all cases of reported crimes, Security is summoned to the scene at the time of the report, and thus is aware of it and creates its own contemporaneous Incident Report. Moreover, there is immediate communication between the Dean of Students and the Director of Security and Safety whenever a crime reported to either department warrants consideration of a timely warning. To the extent not covered by the foregoing illustrations, the timeliness of communication between these two departments was addressed in the course of La Salle’s internal investigation and improved.

The third alleged “weakness” described in the Report also does not affect the calculation of La Salle’s disciplinary referral statistics. The Report alleges that

[t]he relevant offices had no standardized report writing, coding, or control numbering systems in place during the review period. As a result, numerous accounts of the same event were frequently generated that could not easily be cross-referenced or otherwise linked to prevent contradictory accounts and duplicate counting of the same incidents. Our review disclosed that Security generally relied

on Uniform Crime Reporting criteria while Community Development/Student Affairs relied on the standard in their conduct code.

Because, as described above, the database of Disciplinary Reports represents the entire universe from which La Salle's disciplinary statistics should be drawn, this criticism by the Department is inapplicable to Finding #2.

This third alleged weakness, however, identifies an issue relevant to the campus crime reporting mandate of the Clery Act. The Act does not require an institution to maintain a singular Incident Reporting system. In the course of La Salle's internal investigation, the University considered the fact that it had two different reporting systems between Security and Student Affairs, and decided to keep them separate because they serve two very different functions and different audiences. La Salle believes that it is common for universities to have separate reporting systems between the campus security and student affairs functions. In addition, it is entirely appropriate for Security, as the department with the lead responsibility for maintaining and reporting La Salle's crime statistics, to rely on UCR definitions, while Student Affairs, as the lead department for enforcing University policy, relies upon its Code of Conduct. In any event, as described above, there are adequate procedures to assure that liquor law violations uncovered by RAs are available to Security for inclusion in La Salle's disciplinary statistics.

As for the Report's comments on a lack of tracking system for La Salle's Incident Reports, this issue was uncovered and addressed by La Salle before the review commenced. Student Affairs – Security already had a tracking system – now uses a control number for all Incident Reports generated from the same incident, so they are more readily identified as such

for purposes of managing the judicial system as well as campus crime statistics.¹³ To the extent this alleged weakness might have affected La Salle's crime reporting, therefore, it has already been addressed.

C. **La Salle's Internal Audit and Development of Standards for Counting Disciplinary Referrals**

Through its internal investigation, La Salle discovered that it was under-reporting its disciplinary statistics. Three factors contributed to this deficiency. The most significant issue was the lack of a personal review of the Disciplinary Reports themselves, in order to identify those referrals for policy violations that also reflect liquor law – or drug law – violations. For example, one must review the actual Disciplinary Report to determine if the facts underlying an alcohol policy violation reflect actual underage possession (also a liquor law violation), or the mere presence of alcohol. Also, La Salle tracks its disciplinary cases on an academic year basis, rather than a calendar year basis, as Clery Act statistics are counted. Finally, the University's disciplinary system is oriented towards enforcing campus policy, not the law, and the documentation of policy infractions is geared accordingly. After recognizing these weaknesses within its system, La Salle audited its disciplinary referral statistics along with its other crime statistics. Subsequently, La Salle established a formal procedure for counting disciplinary referrals for liquor law violations – including a personal review by a Security staff member of all

¹³ Student Affairs requires all staff members to prepare Incident Reports, and historically has encouraged all witnesses to do the same. Following its internal investigation in the summer and fall of 2004, Student Affairs placed a link to its Incident Report more prominently on its web page, to further encourage incident reporting. Occasionally, this will yield contradictory accounts about a particular incident based upon the perspective of the individual reporting it. It should be considered a virtue, not a vice, however, to get as much information about an incident as possible, even if some of that information is contradictory.

Disciplinary Reports for alcohol policy violations – to ensure that its statistics are more reliable going forward.¹⁴ The central principles of this procedure are as follows:

Disciplinary referrals for liquor law violations involving underage possession and consumption of alcohol will be counted for Clery Act purposes where a Disciplinary Report indicates that an underage student was seen **holding, carrying, transporting or drinking** alcohol; where an underage student is described as **visibly intoxicated or treated for excessive drinking** (depending on where the drinking occurred); or where an underage student **admits** to possession or consumption of alcohol in the course of a confrontation with a resident advisor, security officer or other University employee making the report from which the disciplinary referral is made. Other facts included in the Disciplinary Report may otherwise support counting the case as a liquor law violation in the judgment of the reviewing representative of the Security Department, which has ultimate responsibility for the University's crime statistics.

* * * *

Consistent with the University's disciplinary policy of charging underage students merely for being in the **presence of alcohol** – not a liquor law violation – the University will not count such cases as disciplinary referrals for liquor law violations, except where other evidence of possession, consumption or furnishing to minors is indicated in the Disciplinary Report.

These standards are consistent with La Salle's effective approach to enforcing its alcohol policy, and incorporate a review by counsel of the relevant case law on the subject of "constructive possession." They also are consistent with the guidance provided by the Department in its July 2005 Clery Act Handbook, which, notably, does not address the complicated issue of constructive possession.

¹⁴ Alcohol, which, unlike drugs, is not inherently illegal, presents the biggest challenge among the three categories of disciplinary cases the Clery Act requires institutions to report, which is why the formal protocol is oriented towards liquor law violations.

The procedure established by La Salle, along with other minor “tweaks” to its recordkeeping system,¹⁵ will produce reliable disciplinary statistics going forward, recognizing, of course, that some exercise of judgment by the person reviewing the Disciplinary Reports will be needed based upon the facts presented in certain cases.

D. La Salle’s Response to the Discrepancy Between its Revised Disciplinary Statistics and the Department’s Figures

1. Referrals for Liquor Law Violations

As noted above, the Report indicates that the Department counted 291 disciplinary referrals for liquor law violations 2001-2003 (based upon an undisclosed “sample” of La Salle’s Disciplinary Reports and Incident Reports), while La Salle allegedly reported only 30 such cases, even in its revised figures, over the same period. In fact, the discrepancy is not nearly this substantial, as the Department misstated La Salle’s figures for 2001-2003, which totaled 184 cases. The remaining difference between the Department’s figures and La Salle’s can be explained as follows.

After La Salle requested, and ultimately received, the Department’s list of cases that it determined should be included in the University’s disciplinary referral statistics, it matched the names identified by the Department against its own audit records. La Salle found a significant number of cases each year counted by both the Department and the University. Presumably, these cases are not at issue. While the cases that did not “match” La Salle’s statistics obviously

¹⁵ For example, Community Development’s database of judicial cases tracked policy violations for which students were found responsible, but not those for which they were charged. Community Development now has added a field identifying the disciplinary charge, so the disciplinary files that need to be reviewed for purposes of Clery Act reporting can be more readily identified. Also, beginning with its 2005 disciplinary cases, La Salle now copies and maintains in a file all of the Disciplinary Reports included in its reported statistics, which creates a better audit trail.

were not included by the University, there were a significant number of cases included by La Salle but not the Department.¹⁶

In preparing its response to the Report, the University reviewed the Disciplinary Reports for every case identified by the Department that was not included in La Salle's figures as reported in its 2004 Security Report. From this review, La Salle concedes that there are a handful of cases which should have been included in its statistics and inadvertently were not. There also are a number of cases identified by the Department that are ambiguous on the face of the Disciplinary Report as to whether the described alcohol policy violation also represents a liquor law violation. For example, in cases where underage "possession" of alcohol was disputed or unclear, the fallback "presence of alcohol" policy violation allowed the University to enforce its policy (and the law) without resolving this issue, as would have to be done to establish a liquor law violation.¹⁷ Additionally, there are a substantial number of cases identified by the Department that the University simply disagrees should be included in La Salle's statistics, either because: (a) the Disciplinary Report reflects a policy violation related to there being minors merely in the presence of alcohol, with no evidence of underage consumption, possession or furnishing;¹⁸ (b) the disciplinary referral was for an underage student's visible

¹⁶ In its response to La Salle's request for more specific information behind the number of disciplinary cases identified in the Report, the Department did not provide La Salle with any information about the size of the "sample" of disciplinary cases the PRT reviewed.

¹⁷ The PRT apparently employed a presumption of inclusion in ambiguous cases that cannot be found in the text of the Clery Act or its regulations. The larger issue, from a campus safety perspective, is that La Salle is vigorously enforcing its alcohol policy, irrespective of whether the alleged infraction also violates Pennsylvania law.

¹⁸ The Department appears frequently to have counted disciplinary referrals of the resident of a room in which alcohol and many other people, including minors, were present. Although Pennsylvania law on "constructive possession" is not always consistent, there is ample authority that these facts would not support a criminal liquor law charge, and therefore, such disciplinary cases should not be counted as liquor law violations. *See, e.g., Commonwealth v. Fortune*, 318 A.2d 327, 329 ("We cannot assume that a resident of a home, where guests are present, knows of the full contents of the premises."); *id.* ("The fact of possession loses all persuasiveness if persons other than the accused had equal access . . . to the place in which the property was discovered.") (citation

Continued...

intoxication but the Disciplinary Report indicates that the student had been drinking at an off-campus location not covered by the Clery Act; or (c) the facts reported in the Disciplinary Report simply do not reflect a liquor law violation.

Finally, the Department has included many cases of underage drinking in its disciplinary referral figures. Although underage drinking unquestionably is a liquor law violation, like public intoxication and driving while intoxicated, it is excluded from the crimes that need to be counted for statistical purposes under the Clery Act. The definition of “liquor law violation” in the Clery Act regulations includes “the violation of laws or ordinances prohibiting the manufacture, sale, transporting, furnishing, possessing, of intoxicating liquor” In updating Congress on Clery Act statistics in January 2001, the Department recited this definition and recognized that it excluded underage drinking, stating that “*drunkenness, underage drinking, and driving under the influence are, therefore, not included in this report.*” Exhibit 11 (“The Incidence of Crime on the Campuses of U.S. Postsecondary Education Institutions, A Report to Congress” U.S. Department of Education, Office of Postsecondary Education, January 18, 2001, at 12) (emphasis added).

Although the Department recognized in 2001 that underage drinking was not included in the regulatory definition of “liquor law violation” that drives the counting of disciplinary cases, it has sought to expand the mandate by adding “use” of alcohol to the definition of “liquor law violation” in its recently-published Handbook, and, apparently, through enforcement efforts such as this case. *See Handbook*, at 48 (“This is defined as the violation of state or local laws or

....Continued

omitted); *Commonwealth v. Muddy*, 422 A.2d 601, 606 (Pa. Super. 1980) (evidence insufficient to show that appellant had conscious control over two bags of marijuana in crisper compartment of her refrigerator where she had three roommates and there were five other adults present when the police entered her house); *Smalls v. Penna. Board Probation and Parole*, 823 A.2d 274 (Pa. Commw. 2003) (no constructive possession of alcohol by parolee where parole officer did not bother to investigate who brought alcohol into parolee’s house).

ordinances prohibiting the manufacture, sale, purchase, transportation, possession, or *use* of alcoholic beverages not including driving under the influence and drunkenness.”) (emphasis added). However, the regulation defining a “liquor law violation,” 34 C.F.R. Part 668, Appendix A, has not changed since 2001, and thus there is no statutory or regulatory support for the Department’s arbitrary shift now to demand that disciplinary cases of underage drinking be counted. At best, this requirement in the 2005 Handbook cannot be applied fairly to any institution’s statistics for 2001-2003.

Nevertheless, La Salle did include cases of underage drinking in the disciplinary statistics presented in its October 2004 Security Report, where the facts reflected a violation of law, and continues to do so. Any cases identified by the Department as underage drinking cases that were not included in La Salle’s statistics, cannot be held against the University or considered a misrepresentation of La Salle’s disciplinary statistics.¹⁹

2. Referrals for Drug Law Violations

The Department also has identified more disciplinary referrals for putative drug law violations than La Salle included in its October 2004 Security Report.²⁰ After reviewing each case identified by the Department, La Salle will concede that several cases should have been included in its statistics but were inadvertently omitted. However, in a number of other cases, the facts contained in the Disciplinary Report reflect only policy violations, such as being in the presence of marijuana, without evidence of use or possession; drug paraphernalia only; or residue that would not support a criminal charge. To illustrate, there were several cases

¹⁹ La Salle does not concede that any such cases of underage drinking identified by the Department and not included in the University’s statistics would support a liquor law violation (in addition to a policy violation) under the facts presented in the respective Disciplinary Reports.

²⁰ La Salle also included several disciplinary referrals for drug law violations that were not identified by the Department.

identified by the Department where marijuana was discovered in a dorm room in the course of a health and safety inspection while the residents were out, and all of the residents were referred for disciplinary action without regard to whose marijuana it was. This scenario would not support a drug law conviction, and thus was properly excluded from La Salle's statistics. In another case identified by the Department, apparently based upon an Incident Report that did not result in a disciplinary referral, the individual involved was not a La Salle student and thus not subject to the campus judicial system.

E. Conclusion

La Salle is prepared to discuss the merits of each disciplinary case identified by the Department and not included in the University's statistics, except, as noted, for those few cases the University concedes were mistakenly omitted. However, La Salle is confident that it has (1) independently identified and corrected its weaknesses in its process for compiling its disciplinary referral statistics, and now has a reliable system in place; (2) self-corrected its initial 2001-02 statistics with the revisions reported and published in October 2004; (3) clearly did not "substantially misrepresent" its disciplinary referral statistics reflected in its 2004 Security Report; and (4) has established and vigorously enforces an alcohol policy directed towards promoting responsible behavior and safety for its students.

IV. FINDING #3: FAILURE TO PROVIDE TIMELY WARNINGS OR TO MAINTAIN OPEN CRIME LOGS

A. Department Position: University Did Not Issue Timely Warnings Regarding Serious Or Ongoing Threats To The Safety And Security Of The Campus Community

1. La Salle Has an Effective System for Considering Timely Warnings, and Has Exceeded the Requirements of the Clery Act in Alerting the Campus Community to Safety Threats.

While the Department levies broad criticism of La Salle for its alleged failure to issue timely warnings, the Report identified only two specific instances of timely warnings that the Department believes should have been issued, but were not. Specifically, the Report alleged that

- many serious incidents reported to campus security authorities, including those involving major crimes against persons and property, did not result in a required warning;
- many of the warnings submitted for review were in the form of “Crime Bulletins” that were distributed solely to security officers during roll call as opposed to campus-wide;²¹
- “In many cases, there were offenses reported involving multiple victims in a single geographical area or during a particular time period that would also require a warning to be distributed.”
- “[T]he University does not have an adequate policy on the issuance of these warnings as required by the Act. The decision to issue a warning is made by a small group of senior officials including, but not limited to, the Dean of Students, the Director of Communications and the Director of Security and Safety. This ad hoc group meets on an as-needed basis. However, it is not entirely clear what factors are considered or what drives the decision-making process.”

²¹ To clarify, La Salle did not represent Crime Bulletins issued to security officers at roll call based upon information provided by the police department to be examples of “timely warnings.” Security Alerts and Advisories to the general campus community were specifically identified as such in counsel’s cover letter to an August 20, 2004 document production, whereas Security Crime Bulletins were identified as such in an earlier production. On March 17, 2006, in response to a request from the Department at La Salle’s March 3, 2006 presentation to the government, La Salle supplemented its earlier production with more recent Security Alerts, and, in fact, all of the Security Alerts and Advisories since November 1998 that could be located.

The above criticisms of La Salle's timely warning process appear to contemplate – but did not identify, other than the two alleged sexual assaults reported to the Philadelphia Police in June 2004 – specific instances where the University should have issued a timely warning but did not. When asked to identify which incidents the program review team was concerned about so La Salle could respond substantively to this serious allegation about campus safety, the Department declined to do so, directing La Salle instead to address only the two incidents reported in June 2004. Notwithstanding the direction from the Department that the University need only address the two specific incidents it identified, La Salle also will respond to the Report's significant criticisms of the process by which it considers issuing timely warnings.

First, the Clery Act and its regulations require that timely warnings be issued on crimes “*considered by the institution to represent a threat to students and employees.*” 34 C.F.R. § 668.46(e) (emphasis added). As the highlighted language suggests, the decision to issue a timely warning necessarily involves the exercise of judgment by an institution, and the Act does not prescribe how a timely warning should be considered, or who should be involved in making that determination. La Salle has placed this responsibility primarily in the hands of the two individuals with the most knowledge about campus security and student life, the Director of Security and Safety and the Dean of Students.²² This process is eminently reasonable, has proven effective, and is entirely consistent with the Act.

The Report criticizes La Salle's process as involving too few officials that only meet on an ad-hoc basis without stating why this fails to meet the demands of the Clery Act. Its conclusory criticism ignores the reality that consultation on timely warnings necessarily is done

²² The University's Assistant Vice President for Communications and Marketing also is involved in the consideration and dissemination of a security advisory/alert, and other University officials, including the President, often provide input on the decision to issue a safety advisory/alert or on its content, as reflected in Exhibit 12, which is among the documents produced to the Department through AUSA Annetta Givhan on March 17, 2006.

on an ad hoc basis because it requires a fairly serious incident to trigger the discussion. Indeed, the Department's Clery Act Handbook itself states that "[t]he issuing of a timely warning must be decided on a case-by-case [i.e., ad-hoc] basis in light of all the facts surrounding a crime." *See Handbook*, at 62.²³ In sum, the Report's criticism of La Salle's process for considering and issuing timely warnings is unwarranted and unsupported by the statute and regulations.

Second, La Salle's annual Security Reports throughout the review period have included a description of its timely warning policy that meets all three *suggested* criteria in the Clery Act Handbook. The Handbook suggests that an institution's policy include "1) the circumstances for which a warning will be issued; 2) the individual or office responsible for issuing the warning; and 3) the manner in which the warning will be disseminated." *See Handbook*, at 87. Consistent with this guidance – and pre-dating it – La Salle's timely warning policy statement has been:

In instances when crimes occur that may endanger members of the University community [i.e., "circumstances"], the department [i.e., "responsible office"] publishes and distributes bulletins and email notifications [i.e., "distribution"]. The purpose of these notices is to alert the community to serious events so that they may take appropriate precautions.

Third – and most importantly given that the primary purpose of the Clery Act is enhancing security for students – La Salle has consistently exceeded the requirements of the Clery Act in issuing timely warnings to the campus community. La Salle has issued 44 Safety and Security Alerts from 2001 to the present, including four different updates on the two alleged incidents reported in June 2004. The timely warning requirement relates only to "Clery Act" crimes reportedly occurring on-campus (and in a residence hall), off-campus, or on public property as each is defined – and limited – by the Act. *See* 20 U.S.C. § 1092(f)(3). Largely

²³ Notably, the Handbook, like the statute and regulation, is silent on the question of the number of people and which institutional positions are to be involved in the consideration of timely warnings.

through the vigilance of its security force and the campus community as a whole, there is minimal criminal activity on-campus warranting timely warnings. In most cases, the incidents about which the campus community has been warned occurred outside the geographical coverage of the Clery Act, and accordingly, those timely warnings were not even required by the statute. La Salle's concern for its students' safety, however, certainly is not limited to the four corners of the Clery Act. The University recognizes and closely monitors security in the surrounding neighborhood in which many students live and travel, and has consistently warned its students and employees about threats to their safety.²⁴

2. No Timely Warning Was Needed with Respect to the Alleged April 2003 Sexual Assault, but La Salle Nevertheless Advised the Campus Community About It.

The Report alleges that “[i]n April 2003, a female student enrolled at La Salle reported to one or two basketball coaches that she had awakened in her room to find a male student sexually assaulting her. However, the staff of La Salle's athletic department did not report the incident to appropriate officials, and thus no warnings were issued.”

An accurate understanding of the timing of the report of this alleged sexual assault and the facts surrounding the encounter between these students is essential to the determination of whether a timely warning should have been issued when the incident was reported to the basketball coaches. The facts of this reported sexual assault would not have required the

²⁴ La Salle further exceeds the requirements of the statute in its method of disseminating timely warnings to off-campus students who, although receiving notification when logging into the “myLaSalle” portal, logically may not encounter the notifications posted in residence halls or even the student union. Beginning in the fall of 2005, to be sure off-campus students receive safety alerts and advisories, La Salle's Community Development unit has collected phone numbers from students living off-campus, and sends them a broadcast message through a service called “My Team One.” To La Salle's knowledge, very few institutions take this extra step to ensure warnings are received by students living off campus.

issuance of a timely warning, even if the coaches had reported the incident to the appropriate University officials when they first learned of it.²⁵

First, the alleged victim did not report a sexual assault to the men's and women's basketball coaches in April 2003, as the Report asserts. The alleged incident occurred sometime in April 2003. It was not reported to the basketball coaches until approximately June 30, 2003, at least two months later. This two-month delay in reporting the incident is relevant to the credibility of the report itself, which in turn is relevant to the appropriateness of a timely warning.²⁶ See, e.g., *Commonwealth v. Jones*, 672 A.2d 1353, 1358 (Pa. Super. 1996) (substantial reporting delay relevant to credibility).

Second, the facts presented to the head coaches by the accuser, the accused, and other students in June 2003, suggested ambiguous circumstances of alleged acquaintance rape. The Report's description of this incident critically omits the fact that the accused and accuser had been together for several hours that evening, and that the accused student had walked the alleged victim home and was invited into her apartment, along with other students with whom they were socializing. As detailed in the Report, the allegation suggests an incident more akin to a stranger

²⁵ Although the male student was charged with sexual assault two months after it was reported to the Philadelphia Police Department in June 2004, the charges were dismissed on the day the trial was scheduled after the alleged victim refused to testify. Although La Salle made several attempts, by mail and in-person, to speak to the alleged victim about her allegations, she declined to speak to any University staff members about the incident or the coaches' handling of her allegations. However, through its internal investigation, La Salle's counsel did interview all of the other witnesses to the interactions between the alleged victim and the accused on the night in question, including the accused himself.

²⁶ It of course is also appropriate to consider the credibility of the accuser, the accused, and the information itself for purposes of considering whether a timely warning to the campus community objectively would have been warranted at the time the incident was reported to the coaches in June 2003. While there was reason to doubt the veracity of the sexual assault allegation then as well as now – as reflected by the victims' ultimate refusal to testify in the criminal case – this is not the proper forum to debate the merits of the case and the particular evidence for either party's version of events. Suffice it to say that doubts about the truthfulness of a sexual assault allegation, or even ambiguity in the information available, are appropriate considerations in determining whether a timely warning is warranted. In contrast to the requirement that all alleged crimes are to be included in an institutions statistics and crime log, the exercise of judgment in consideration of a timely warning does not require an institution to accept an allegation of a crime – any crime – at face value.

rape where the alleged assailant was unknown to the accused and/or had not been invited into her apartment, circumstances which, if true, might counsel in favor of a timely warning.

Based upon what actually was known by the head basketball coaches in June 2003 and by other University officials in June 2004, no timely warning was needed about the alleged April 2003 sexual assault. Quite simply, the accused student was not considered a threat about whom students and employees should be warned. Indeed, the Associate Dean of Students did not suspend this student when the allegation first came to light in June 2004. In short, the facts known at the time did not meet the University's standards for issuing an interim suspension, one of which is a threat of danger or disruption to the University community.

It is instructive – indeed, conclusive – that if the University did not believe it had grounds to suspend the accused student in June 2004, then the same facts known by the coaches one year earlier did not support a timely warning at that time. In sum, if senior University officials knew in June 2003 what they learned in June 2004, they still would not have perceived a threat to the community warranting a “timely warning” about the alleged 2003 sexual assault.²⁷

Nevertheless, given the magnitude of the situation and the media attention on the two sexual assault allegations reported in June 2004, the University did inform the campus community about this allegation in a statement from the Dean of Students on Monday, June 28, 2004. *See* Exhibit 13. This statement, in addition to noting that this 2003 allegation had come to light, reminded students of the many resources available for sexual assault prevention and

²⁷ This is not to ignore the significance of coaches' failure to report the allegation internally when they learned of it in June 2003, which would have permitted the consideration of a timely warning by the appropriate University officials at that time. Both coaches clearly knew they had an obligation to report an allegation as serious as this to La Salle's Athletic Director, as evidenced, *inter alia*, by the fact that they had reported far less significant incidents, and/or admitted as much in their government interviews. After a thorough and diligent internal investigation, La Salle acted as forcefully as imaginable to address the coaches' failure to report the 2003 allegation by accepting their resignations under threat of dismissal.

assistance, thus fulfilling the Department's later guidance in the Handbook that "the warning should include all information that would promote safety." Handbook, at 62. This same resource information was included in a later statement issued by the Dean of Students after the accused student was charged. *See* Exhibit 14.

In conclusion, an analysis of the known facts surrounding the 2003 sexual assault allegation supports the determination that no timely warning was needed. Indeed, any contention that a timely warning was required based on what was known then (or even now) about the 2003 allegation, is tantamount to imposing a *per se* obligation for an institution to issue a timely warning whenever any allegation of a sexual assault is made. Neither the Clery Act nor the Handbook imposes such a *per se* requirement, and there is no reason to believe that any school follows this standard.

3. Although No Timely Warning Was Required About the Alleged Sexual Assault in June 2004, La Salle Issued Three Statements to the Student Body Within Two Weeks After The Incident Was Reported.

The Report alleges that "[i]n mid-2004, a second female employed by La Salle as a summer basketball camp counselor reported to a basketball coach that she was sexually assaulted while she was under the influence of alcohol on La Salle's grounds by two members of the men's basketball team. The staff members of La Salle's athletic department did not report the incident to appropriate officials and thus no warnings were issued."

The Report's description of the 2004 incident and La Salle's reaction to it, are inaccurate. Indeed, La Salle informed the campus community about the June 2004 allegations no less than three times in the two weeks after it was reported. *See* Exhibit 13. These statements meet any reasonable interpretation of the Clery Act's timely warning requirement in that they informed the student body about the incidents, and gave additional, relevant information to promote safety.

All three of the statements issued by the Dean of Students were produced to the government on September 22, 2004 (Bates labeled 1040-42).

La Salle acted swiftly to eliminate any possible threat to the community by placing both of the accused students on interim suspension on Friday, June 25, 2004, based upon information developed the first day after the allegation was reported to the police. As of that day, both of these students were barred from campus (one of the students was out-of-town already, and the other, questioned by police during the night of June 24-25, returned home; both were later escorted into their on-campus apartments by Security to pick up their belongings). Accordingly, and putting aside the particular allegations of sexual assault, whatever threat to the campus community that *might* have existed was removed by the University, thus obviating the need for any timely warning.

Reflecting La Salle's commitment to and concern for the well-being of its students, the Dean of Students informed the student body about the incidents the following Monday, June 28, 2004. This initial letter was added to the myLaSalle internet portal, physically posted in summer residences, and posted electronically (with a prominent link) on La Salle's web site. While the June 28 letter (and the three letters that followed) was not in the typical format of a "Security Advisory," nor was it discussing a typical incident. Given the widespread coverage of the allegations by the print and television media over the preceding weekend, this communication hardly needed a "Security Advisory" headline. The purpose of the letter was both to inform and reassure a student body predictably shaken by these two serious allegations, and it clearly met that goal.

Specifically, the initial communication to students (and, via the web, the public), informed them:

In the early morning hours of Friday, June 25, the Philadelphia Police Department notified the University's Security and Safety Department that they were investigating an allegation of sexual assault in one of the University's townhouses. Since that time, the University has offered to assist the Police Department in any way possible. As a routine procedure, the University has launched its own internal investigation of the incident, as well as an incident alleged to have occurred in April 2003, about which information has surfaced in the current investigation.

* * * * *

I strongly encourage all of you to become familiar with these [sexual assault resource] materials, with particular attention to the numerous sources of support available in our University community. I also strongly encourage you to discuss with your friends and/or with members of our staff ways in which you may minimize the exposure of yourself and your fellow students to risk. The staffs of our Community Development and Health Services units – particularly our residential, Counseling Center and Student Health Center staff members – are available for consultation with individuals and groups. In addition, they, as well as our student organizations Sexual Assault and Violence Ends (SAVE) and Peer Educators, sponsor workshops and forums on this subject throughout the academic year and will continue to do so.

Exhibit 13. Three days later, the Dean of Students informed students of the progress of the University's response to the alleged incidents of sexual assault, including that the University had reached out to the alleged victims to inform and assist them with pursuing their options within the school disciplinary system, and also that the accused students are "no longer enrolled at La Salle University and no longer reside in University housing."²⁸ Finally, when the two accused students were criminally charged, the Dean of Students sent out another update to students, informing them of this and the efforts of the University to assist all students on campus that summer who might have been affected by the allegations.

²⁸ Although these decisions had been made on June 25, they were not mentioned in the initial letter because one of the accused students had not yet been informed that he had been suspended.

As the Department acknowledges, “Clery Act regulations do not specify what information should be included in a timely warning. However, because the intent of the warning is to enable members of the campus community to protect themselves, the warning should include all information that would promote safety.” Handbook, at 62. The Dean of Students’ communications clearly met this standard.

Given these communications with the student body in the immediate aftermath of the alleged sexual assaults being reported, the Report’s allegation that La Salle violated the Clery Act by failing to inform the campus community of these incidents and the ways to promote safety in a timely manner is simply incorrect.²⁹ Given that any *possible* threat to the campus community from the two accused students was removed almost immediately by the University’s actions in suspending them, it would have been entirely consistent with the requirements of the Act for the University to conclude that no “warning” was needed. Nevertheless, La Salle issued one on the June 2004 incident, and updated it twice as events progressed.

B. Department Allegation: The University Also Failed To Maintain An Accurate And Complete Crime Log In Accordance With The Federal Regulations

The Department alleges that La Salle failed to include all reported crimes for the review period (2001-03) into its crime log, and for those crimes that were entered into the log, failed to identify the disposition of the case. The Department also alleges that La Salle failed to amend its

²⁹ It is troubling that the Report does not even acknowledge the three communications from the Dean of Students to the campus community (and the public) in making this allegation. Any meaningful review of an institution’s response to allegations such as these, and in particular of the timely warning issue, must consider what communication, if any, the institution made, and whether or not it meets the Department’s standards for a timely warning, as reflected in its own Clery Act Handbook. The Report, however, does not criticize the University’s communications to the campus community as representing an inadequate warning; it inexcusably ignores them entirely.

log to reflect the reclassification of certain crimes as a result of the University's internal audit, particularly thefts and burglaries.

1. **La Salle's Crime Log Was Complete Throughout The Review Period, And Exceeded The Requirements of the Statute and Regulations.**

La Salle's crime log reflected all reported crimes during the review period, although the log was prepared in a way that makes the Department's concerns understandable. As noted above, La Salle's Security Department Investigator updates the log each weekday as the Incident Reports from the previous day are reviewed. Prior to the University's internal investigation in the summer of 2004, the Investigator was under the misimpression that only on-campus crimes had to be recorded in the log. Accordingly, the handwritten portion of the crime log excluded off-campus crimes within Security's patrol perimeter that unquestionably should have been included in the log. The Investigator has received additional training, and since the Fall of 2004, all crimes, on-campus and off-campus, have been recorded into the handwritten log.

Notwithstanding the Investigator's misunderstanding of the crime log requirement, La Salle's crime log was not deficient during the review period. As depicted in Exhibit 15, on the inside covers of the crime log, the Investigator affixed folders in which he placed his rolling spreadsheets recording all on-campus *and off-campus* crimes as they are reported.³⁰ These spreadsheets contain all of the information required for an institution's crime log. Moreover, the Investigator, taking a broad view of a "student's right to know," placed his spreadsheets recording all reported crimes for the entire previous year in the folders behind those for the current year. In other words, if a student or any member of the public asked to see the crime log in 2003, this individual would have seen the handwritten portion of the log in the middle, as well

³⁰ These spreadsheets have been previously identified as Exhibit 4.

as the spreadsheet with all on-campus crimes for 2002 and 2003-to-date on the inside front cover, and the spreadsheet with all off-campus crimes for 2002 and 2003-to-date on the inside back cover. *See* Exhibit 15. Thus, La Salle's crime log was complete as far as representing all reported crimes under one cover during the review period, and far exceeded the 60-day "window" imposed by the Clery Act.

2. La Salle's Crime Log Now Expressly Identifies The Disposition of A Crime.

La Salle recognizes that the handwritten portion of the crime log generally did not note the disposition of reported crimes, although the crime spreadsheets enclosed within the crime log did routinely identify whether a police report had been filed and whether an arrest had been made. This is not due to a lack of follow-up on the part of Security, but rather due to a failure to note the absence of new information on a case. After reviewing this Finding in the Report, La Salle conferred with security departments at several sister universities and now explicitly notes the disposition of a crime in its log. For example, in the most common situation of an unsolved crime, the crime log identifies the disposition with an "Ongoing Investigation" stamp, which would be amended if and when a case is solved. *See* Exhibit 16 (Handwritten portion of crime log). La Salle believes this corrective action adequately addresses this identified deficiency in its crime log.

3. Failure to Amend Archived Crime Log to Reflect Revised Crime Statistics

The Department's final criticism of La Salle's crime log is that the University failed to amend its archived log to reflect the revised crime statistics that resulted from La Salle's internal audit. The University concedes that it did not amend its archived crime log to, for example, change thefts to burglaries from 2001 and 2002 as these crimes were re-classified through the internal audit in 2004. Although this was purely an oversight following the audit, La Salle

disputes that such an action is required by the Clery Act, given the purpose of the crime log to depict a current (60-day) picture of campus and off-campus crime. Indeed, in its recently-published Handbook, the Department states that an institution is not required to update the disposition of a crime log entry after 60 days have passed. *See Handbook*, at 70. Most importantly, La Salle published its revised crime statistics in those places where parents, students or other interested parties are far more likely to review them – in its published October 2004 Security Report and on the Department’s campus crime statistics web site.

V. FINDING #4: REQUIRED POLICY STATEMENTS OMITTED OR INCOMPLETE

A. Department Position

The Department alleges that “La Salle failed to include certain required policy statements in its Campus Security Reports which are intended to enable students and parents to make informed decisions and to be aware of available resources and recourse in the event of certain crimes. Specifically, the Policy did not contain the disclosure regarding procedures for campus disciplinary action in alleged sexual assault cases.” The Report identifies four specific examples of inadequate or omitted policy statements. La Salle notes at the outset that none of these examples concern “procedures for campus disciplinary action in alleged sexual assault cases,” as the “specific” Finding states. Rather, one of the examples concerns assistance to victims in reporting sexual assaults to the police. The other three examples do not concern the Campus Sexual Assault Victims Bill of Rights (“CSAVBR”) at all.

B. La Salle’s Response

As noted below, with respect to certain policies, La Salle concedes that the required policy language was omitted from the 2002 and 2003 Security Reports (containing the 2001 and 2002 calendar year crime statistics); with regard to other policies, La Salle disputes the Report’s

findings. However, with respect to all four examples identified in the Report, La Salle included the requisite policy language in its 2004 Security Report. Through its internal investigation, La Salle conducted a line-by-line review of the policy statements in its Security Report and made whatever additions or clarifications that were needed.

The PRT, of course, had access to the 2004 Security Report that contained La Salle's crime statistics for 2003, one of the years covered by the Review. Accordingly, the PRT should have been aware that La Salle self-corrected any alleged deficiencies in the policy statement.

C. Assistance To Victims With Reporting Crimes To The Police

The first allegation by the Department regarding La Salle's policy statements is that "the University's Campus Security Report does not include a clear statement that institutional personnel will assist the student in notifying appropriate law enforcement authorities in the event of certain crimes." Report, at 9.

La Salle's Security Reports published in 2001-2003 all contained the following statements about assistance in reporting crimes:

- "Officers will assist students who become victims of crime on or off campus by contacting the appropriate service agency. All victims of crime are encouraged to file a report with the Philadelphia Police Department."
- "The University's role is to assist the victim to make the best decisions for him/herself."

These statements adequately and unambiguously conveyed La Salle's willingness to assist victims of all crimes to contact the Philadelphia Police Department, while at the same time emphasizing the autonomy of the victim to pursue whatever course with which he or she is comfortable, with the full support of the University.

Moreover, the policy statements in the Security Report do not stand alone. They are supplemented by the equally accessible and more narrowly on-point sexual misconduct resource

brochures published and distributed by the Division of Student Affairs, as well as the Student Guide to Resources, Rights and Responsibilities, both of which state that in cases of sexual misconduct, “Safety and Security (215.951.2111) can put you in touch with the Philadelphia Police.”

Notwithstanding the fact that the above statements met the requirements of the Clery Act, when La Salle conducted its line-by-line review of its Security Report, it enhanced the statement in the CSAVBR as follows: “Security will assist you in reporting the incident to the Philadelphia Police and direct you to other available resources.” This corrective action (to the extent it was necessary) having already been made in October 2004 at La Salle’s own initiative, the University believes that no further action is needed with respect to this element of Finding #4.

D. Policy Statement Regarding Compilation of Crime Statistics

Next, the Department alleges that “the Campus Security Report did not include a policy statement detailing how crime statistics were compiled for the years under review.”

In the course of La Salle’s internal investigation and its line-by-line review of the policy statements in the Security Report, the University discovered that it did not detail its procedures for compiling crime statistics. The University believes this omission resulted from an oversight in prior versions of the Security Report. The University corrected this issue in the report published October 1, 2004 (and again in 2005), with the following statement:

These statistics are compiled through the review of Incident Reports and other records prepared by the Security and Safety Department, Division of Student Affairs, others in the University Community, and also from information provided by the Philadelphia Police Department and other sources. Security periodically contacts Health Services and the University Ministry to encourage them to provide basic, non-identifying information about crimes reported confidentially to them for inclusion in this report.

The University clearly already has addressed this element of Finding #4, and does not believe that any further action is necessary.

E. Statements Regarding Confidential Reporting

Third, the Department alleges that “the reports lacked any policy discussion of any confidential Incident Reporting schemes or the institution’s position regarding voluntary statistics-only reporting by professional or pastoral counselors as required by 34 C.F.R. § 668.46(b)(4)(iii).”

Prior to 2004, La Salle decided not to request professional or pastoral counselors to inform students reporting crimes confidentially to them of the procedures for reporting crimes for statistical purposes, even anonymously. The University chose this course so as not to inhibit the counselor-client relationship or the autonomy of a crime victim that the CSAVBR seeks to vindicate. At the same time, the University was cognizant of the many ways it disseminated information to students about how to report crimes – including the annual Security Report, the Student Guide, two different sexual misconduct pamphlets, a sexual harassment pamphlet, and even stickers and refrigerator magnets in residence halls – and trusted the judgment of its experienced counselors to provide reasonable guidance according to each individual circumstance. Indeed, Dr. Suzanne Boyll, who oversees the University’s Counseling Center and is herself a counseling psychologist, told the PRT that (a) she encourages sexual assault victims to file Incident Reports; and (b) it is very rare that a sexual assault victim comes to the Counseling Center as a “first stop,” without the incident first having been reported elsewhere.³¹

³¹ Dr. Boyll could not think of a time where she called Security about an incident of which Security was unaware; usually, Security will contact her to follow up with a crime victim.

La Salle's judgment with regard to this issue was permitted by the Clery Act. Pastoral and professional counselors are excluded from the definition of "campus security authority" – even for purposes of timely warnings – and crimes reported confidentially to them do not have to be included in an institution's annual crime statistics. *See* 34 C.F.R. § 668.46(a). The regulation cited in the Report, moreover, is permissive, requiring a description of "procedures, *if any* that encourage pastoral counselors and professional counselors, if and when they deem it appropriate, to inform the persons they are counseling of any procedures to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics." 34 C.F.R. § 668.46(b)(4)(iii) (emphasis added). Logically, the "if any" language suggests that where there was no such policy, no statement needed to be included in the Security Report.³²

In connection with La Salle's internal investigation in the summer of 2004, the University decided to take the voluntary step of asking its pastoral and professional counselors to disclose anonymously any crimes reported confidentially to them, if, in their judgment, it would be appropriate for them to do so. Consistent with this new policy, the following language was added to the Security Report in October 2004:

Security periodically contacts Health Services and the University Ministry to encourage them to provide basic, non-identifying information about crimes reported confidentially to them for inclusion in this report.

³² The Department's Handbook for Campus Crime Reporting, released only in July 2005, clarified the requirement by stating "If your institution does not have these procedures, state this." *See* Handbook, at 95. At least until the publication of the Handbook, however, it was perfectly consistent with the "if any" language of the regulation, and the overall treatment of confidential reports to counselors, not to have any statement on this subject if no such policies existed.

Additionally, as a result of its line-by-line review of the policy statements in its Security Report, La Salle added the following language to its October 2004 Security Report, specifically on the subject of confidential reporting:

A victim's confidentiality will be maintained to the extent legally and practically possible as an investigation proceeds.

* * * * *

[The Associate Dean of Students or the Associate Director of Community Affairs] will review the procedures with you, confidentially, should you decide to file formal [sexual assault] charges against the assailant(s) in the University disciplinary system.

These comments supplement the statements regarding confidential reporting, particularly of sexual assault, already included in prior versions of the annual Security Report within the review period, such as the following from La Salle's 2002 Security Report:

Immediate Responses If You Are Raped Or Sexually Assaulted. . . . Talk with a counselor who can explain your options, give you information, and provide emotional support. . . . These professionals will maintain appropriate confidentiality.

* * * * *

Counseling and Emotional Support. . . . Women Organized Against Rape (WOAR) is a local rape crisis center with a 24-hour emergency hotline [number]. Trained counselors provide information and options counseling confidentially to women and men who have been sexually assaulted.

Accordingly, La Salle disputes the Report's finding that *any* of its Security Reports during the review period violate the requirements of the Clery Act or its attendant regulations with respect to policy statements on confidential reporting or procedures on voluntary disclosures from pastoral or professional counselors. To the extent the Department believes

these policy statements were deficient, La Salle voluntarily corrected them. No further action is warranted with respect to this element of Finding #4.

F. Description of Alcohol and Drug Abuse Programs

Finally, the Department alleges that “the Campus Security Report does not describe alcohol and drug-abuse education programs offered in compliance with the HEA under section 120(a) and (b).”

La Salle did in fact identify its drug and alcohol abuse education programs and refer students to where these services could be obtained during the review period. The 2002 Security Report contained the following language:

Drug and alcohol abuse education programs are conducted by Community Development, assisted by the Security and Safety Department. La Salle’s Counseling Center provides resources and services relating to alcohol and drug abuse.

This language complies with requirements of the Clery Act, particularly as interpreted by the Department in its recently-introduced Handbook. The Handbook specifically permits institutions to cross-reference the materials they use to comply with the HEA mandate to provide alcohol and drug abuse programs. *See Handbook*, at 100. Nevertheless, based upon the line-by-line review of its Security Report La Salle conducted during its internal investigation, the University augmented its description as follows:

La Salle’s Health Services Department provides resources and services relating to alcohol and drug abuse. Information and resources can be obtained by contacting Health Services . . . and through the University’s Web site at www.lasalle.edu/students/dean/health/aodp.htm³³

³³ La Salle is fortunate to have an innovative Alcohol and Other Drug (“AODP”) program led by a pioneer in the field, Dr. Robert Chapman. Dr. Chapman has been affiliated with La Salle for 18 years and is also an adjunct professor of counseling and coordinator of the addictions counseling concentration in La Salle’s M.A. program in Clinical-Counseling Psychology. Dr. Chapman has more than 30 years’ experience in AOD counseling and program development, with a particular emphasis on Higher Education AOD programming. Dr. Chapman has counseled thousands of La Salle students across a spectrum ranging from one-time violators of the University’s

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The Report does not acknowledge the University's policy language before or after it was updated, suggesting that reference to its drug and alcohol education and counseling programs are omitted altogether. This, of course, is not the case. La Salle has been and is in full compliance with this requirement with its last two Security Reports and no further action should be required with respect to this element of Finding #4.

VI. CONCLUSION

La Salle's foregoing response clearly demonstrates its good faith commitment to fulfilling its Clery Act obligations, and to campus safety generally. In the immediate aftermath of the reported sexual assaults, La Salle voluntarily engaged in a comprehensive self-evaluation of its Clery Act compliance that extended far beyond the issues logically connected to those two incidents or the Department's investigation at its outset. La Salle invested an enormous amount of resources to analyze and enhance its Clery Act compliance into what is now a state-of-the-art program, including institutionalizing training with a dedicated training budget.

La Salle addressed every alleged deficiency and weakness identified in the Report before the Department brought it to the University's attention. Self-initiated corrective actions such as those undertaken by La Salle should be encouraged, not penalized. Under these circumstances, a financial penalty is completely unwarranted and inconsistent with the Department's handling of other Clery Act program reviews. Should the Department have any continuing concerns about La Salle's Clery Act compliance after reviewing this Response, La Salle will continue to

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alcohol and drug policies to those with serious addiction problems. A sample of the information available at the AODP web page, including Dr. Chapman's CV, is attached as Exhibit 17.

cooperate fully with the Department to address those concerns through a technical assistance program or corrective action plan.

La Salle appreciates the opportunity to respond the Department's Report, and we look forward to continuing a productive dialogue with the Department in an effort to resolve this matter amicably.